

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

Marquis Aurbach Coffing

Brian R. Hardy, Esq.

Nevada Bar No. 10068

Susan E. Gillespie, Esq.

Nevada Bar No. 15227

10001 Park Run Drive

Las Vegas, Nevada 89145

Telephone: (702) 382-0711

Facsimile: (702) 382-5816

bhardy@maclaw.com

Attorneys for Defendant Jonas Frey

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LEVELS NETWORK, INC., a Delaware corporation; and AW BETEILIGUNGS GMBH, a limited liability company organized under the laws of Germany,

Plaintiffs,

vs.

JONAS FREY, an individual,

Defendant.

Case Number:
2:21-CV-01796-RFB-BNW

**STIPULATION FOR ENTRY OF
PROTECTIVE ORDER**

(Submitted Under LPR 104(a))

Plaintiffs Levels Network, Inc. and AW Beteiligungs GMBH (collectively “Plaintiffs”), by and through their counsel of record, Kevin Murphy, Esq. (phv) of Wuersch & Gering LLP, and Brian W. Boschee and James B. Boyle, of Holley Driggs and Defendant Jonas Frey, by and through his counsel of record, Brian R. Hardy, Esq., of Marquis Aurbach Coffing, hereby submit this Stipulation for Entry of Protective Order (the “Stipulation”) pursuant to Fed. R. Civ. P.26©, LR II LA 6-2, and LPR 1-4(a).

On October 21, 2021, Plaintiffs and Defendant conducted a conference pursuant to Fed. R. Civ. P. 26, LR II 26-1, and the Local Patent Rules. This Joint Motion is submitted within the fourteen (14) day required deadline set forth in LPR 1-4(a).

///

///

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 WHEREFORE, the parties hereby jointly submit a [Proposed] Protective Order
2 attached hereto as **Exhibit A**, and stipulate to move this Court to grant and enter the
3 [Proposed] Protective Order.

4 IT IS SO STIPULATED.

5 Dated this 27th day of October, 2021
6 HOLLEY DRIGGS

7 By: /s/James D. Boyle
James D. Boyle, Esq.
8 Nevada Bar No. 8384
Brian W. Boschee, Esq.
9 Nevada Bar No. 7612
400 South 4th Street, 3rd Floor
10 Las Vegas, Nevada 89101
11 Attorneys for Plaintiffs

Dated this 27th day of October, 2021
MARQUIS AURBACH COFFING

By: /s/Susan E. Gillespie
Brian R. Hardy, Esq.
Nevada Bar No. 10068
Susan E. Gillespie, Esq.
Nevada Bar No. 15227
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Defendant

12 WUERSCH & GERING LLP

13
14 By: /s/Kevin Murphy
Kevin Murphy, Esq. (Pro Hac Vice)
15 100 Wall St. 10th Floor
New York, NY 10005
16 Attorneys for Plaintiffs

17 **ORDER**

18 IT IS SO ORDERED this 29th day of October, 2021.

19
20 
21 UNITED STATES MAGISTRATE JUDGE
22
23
24
25
26
27

Exhibit A

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

Marquis Aurbach Coffing

Brian R. Hardy, Esq.
Nevada Bar No. 10068
10001 Park Run Drive
Susan E. Gillespie, Esq.
Nevada Bar No. 15227
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
bhardy@maclaw.com
Attorneys for Defendant Jonas Frey

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LEVELS NETWORK, INC., a Delaware corporation; and AW BETEILIGUNGS GMBH, a limited liability company organized under the laws of Germany,

Plaintiffs,

vs.

JONAS FREY, an individual,

Defendant.

Case Number:
2:21-CV-01796-RFB-BNW

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Plaintiffs Levels Network, Inc. and AW Beteiligungs GMBH (collectively “Plaintiffs”) and Defendant Jonas Frey (Plaintiffs and Defendants are collectively “the Parties”), have submitted a Joint Motion for Entry of a [Proposed] Stipulated Protective Order (the “Joint Motion”) pursuant to FED. R. CIV. P. 26(c), LR IA 6-2, and the Ninth Circuit’s directives in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006).

The Court, having duly considered the Parties Stipulation, and finding that good cause exists for entry of a protective order, now **ORDERS** that the Parties shall observe the following provisions of this Protective Order:

1. Scope. All disclosures, affidavits and declarations and exhibits thereto, deposition testimony and exhibits, discovery responses, documents, electronically stored information, tangible objects, information, and other things produced, provided, or disclosed

1 in the course of this action which may be subject to restrictions on disclosure under this
2 Order, and information derived directly therefrom (hereinafter referred to collectively as
3 “documents”), shall be subject to this Order as set forth below. As there is a presumption in
4 favor of open and public judicial proceedings in the federal courts, this Order shall be
5 strictly construed in favor of public disclosure and open proceedings wherever possible. The
6 Order is also subject to the Local Rules of this District and the Federal Rules of Civil
7 Procedure on matters of procedure and calculation of time periods.

8 **2. Form and Timing of Designation.** A party may designate documents as
9 confidential and restricted in disclosure under this Order by placing or affixing the words
10 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” (hereinafter referred to as
11 “CONFIDENTIAL”), or “ATTORNEYS EYES ONLY – SUBJECT TO PROTECTIVE
12 ORDER” (hereinafter referred to as “ATTORNEYS EYES ONLY”), or “OUTSIDE
13 ATTORNEYS EYES ONLY – SUBJECT TO PROTECTIVE ORDER” (hereinafter referred
14 to as “OUTSIDE ATTORNEYS EYES ONLY”) (collectively “Protected Materials”) on the
15 document in a manner that will not interfere with the legibility of the document and that will
16 permit complete removal of the designation. Documents shall be designated prior to or at the
17 time of the production or disclosure of the documents. When a tangible object is produced for
18 inspection subject to protection under this Order, a photograph thereof shall be produced at
19 the time of inspection labeled with the designation CONFIDENTIAL, ATTORNEYS EYES
20 ONLY or OUTSIDE ATTORNEYS EYES ONLY. Thereafter, any information learned or
21 obtained as a result of the inspection shall be subject to protection under this Order in
22 accordance with the applicable designation. When electronically stored information is
23 produced which cannot itself be marked with the designation CONFIDENTIAL or
24 ATTORNEYS EYES ONLY or OUTSIDE ATTORNEYS EYES ONLY, the physical media
25 on which such electronically stored information is produced shall be marked with the
26 applicable designation. The party receiving such electronically stored information shall then
27 be responsible for labeling any copies that it creates thereof, whether electronic or paper, with

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 the applicable designation. By written stipulation the parties may agree temporarily to
2 designate original documents that are produced for inspection CONFIDENTIAL,
3 ATTORNEYS EYES ONLY, or OUTSIDE ATTORNEYS EYES ONLY even though the
4 original documents being produced have not themselves been so labeled. All information
5 learned in the course of such an inspection shall be protected in accordance with the
6 stipulated designation. The copies of documents that are selected for copying during such an
7 inspection shall be marked CONFIDENTIAL, ATTORNEYS EYES ONLY, or OUTSIDE
8 ATTORNEYS EYES ONLY as required under this Order and, thereafter, the copies shall be
9 subject to protection under this Order in accordance with their designation. The designation
10 of documents for protection under this Order does not mean that the document has any status
11 or protection by statute or otherwise except to the extent and for the purposes of this Order.

12 **3. Documents Which May be Designated CONFIDENTIAL.** Any party may
13 designate documents as CONFIDENTIAL upon making a good faith determination that the
14 documents contain information protected from disclosure by statute or that should be
15 protected from disclosure as confidential business or personal information, medical or
16 psychiatric information, trade secrets, personnel records, or such other sensitive commercial
17 information that is not readily publicly available. Public records and documents that are
18 readily publicly available may not be designated for protection under this Order.

19 **4. Documents Which May be Designated ATTORNEYS EYES ONLY.** Any
20 party may designate documents as ATTORNEYS EYES ONLY upon making a good faith
21 determination that the documents contain information protected from disclosure by statute or
22 that should be protected from disclosure as trade secrets or highly sensitive personal,
23 financial, or business information.

24 **5. Documents Which May be Designated OUTSIDE ATTORNEYS EYES**
25 **ONLY.** Any party may designate documents as OUTSIDE ATTORNEYS EYES ONLY
26 upon making a good faith determination that the documents contain information protected
27 from disclosure by statute or that should be protected from disclosure such as: (a)

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 commercially sensitive marketing, financial, sales, web traffic, research and development, or
 2 technical data or information; (b) commercially sensitive competitive information,
 3 including, without limitation, information obtained from a Non-Party pursuant to a current
 4 Nondisclosure Agreement (“NDA”); (c) information or data relating to future products not
 5 yet commercially released and/or strategic plans; (d) commercial agreements, licenses and
 6 licensing terms, settlement agreements, or settlement communications, the disclosure of
 7 which is likely to cause harm to the competitive position of the Producing Party; (e) trade
 8 secrets, pricing or profit information, sales or marketing forecasts or plans, business plans,
 9 sales or marketing strategy, product development information, engineering documents,
 10 testing documents, employee information, customer lists, and other non-public information
 11 of similar competitive and business sensitivity; or (f) information that is likely to cause
 12 economic harm or significant competitive disadvantage to the Producing Party if disclosed.

13 **6. Depositions.** Deposition testimony shall be presumptively deemed
 14 ATTORNEYS EYES ONLY for a period of twenty-five (25) calendar days following
 15 receipt of the final transcript by counsel for the deponent (or by the deponent if not
 16 represented by counsel). Within twenty-five (25) calendar days following receipt of the final
 17 transcript, the parties shall review the transcript and specifically designate portions of the
 18 transcript CONFIDENTIAL, ATTORNEYS EYES ONLY, or OUTSIDE ATTORNEYS
 19 EYES ONLY as appropriate, by notifying all counsel of record in writing of said
 20 designation. Such designation shall be specific as to the portions of the transcript designated
 21 for protection under this Order. Thereafter, the deposition testimony so designated shall be
 22 separately bound and protected, pending objection, under the terms of this Order. If counsel
 23 for the deponent, the deponent, counsel for a party, or a party designates a portion of the
 24 deposition testimony CONFIDENTIAL, ATTORNEYS EYES ONLY, or OUTSIDE
 25 ATTORNEYS EYES ONLY on the record during the deposition, the designating person
 26 shall have the right to exclude all persons not authorized to receive such information under
 27 this Order from the deposition, or any portion thereof, before taking the designated

1 testimony. Any such designation on the record relieves the designating party from thereafter
2 making a written designation as provided above.

3 **7. Protection of Confidential Material.**

4 **(a) Protection of Documents Designated CONFIDENTIAL.** Documents
5 designated CONFIDENTIAL under this Order shall not be used for any purpose whatsoever
6 other than the prosecution or defense of this action, and of any appeal thereof. This
7 agreement, however, does not encompass materials that (a) were in the recipient's possession
8 before receipt from the discloser, (b) are or become publicly known without breach by the
9 recipient, (c) are rightfully received by the recipient from a third party who obtained the
10 materials by proper means without a duty of confidentiality, (d) are disclosed by the
11 discloser to a third party without a duty of confidentiality on the third party, or (e) are
12 independently developed or learned by the recipient. The parties and counsel for the parties
13 shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL to
14 any third person or entity except as set forth in subparagraphs (1) - (7) below. Subject to
15 these requirements, the following categories of persons may be allowed to review
16 documents that have been designated CONFIDENTIAL:

17 **(1) Outside Counsel of Record.** Outside counsel of record for the parties and
18 employees and agents of counsel who have responsibility for the preparation and
19 trial of the action, including any independent litigation support providers retained by
20 outside counsel to assist in this action, and their employees, contractors, and agents
21 whose duties and responsibilities require access to such materials, and who are not
22 current employees of any party to this litigation or of any direct competitor to any
23 party to this litigation.

24 **(2) Parties.** Parties and employees of a party to this Order, including in-
25 house counsel, subject to the Nevada Rules of Professional Conduct.

26 **(3) The Court.** The Court and its personnel.

27 **(4) Court Reporters and Recorders.** Court reporters and recorders engaged

1 for depositions.

2 **(5) Persons Creating or Receiving Documents.** Any person who, on the
3 face of the document, authored, received, or recorded the designated document, as
4 well as any person who has previously seen or was aware of the designated
5 document, as established through deposition testimony or otherwise under oath or as
6 agreed upon by counsel for all parties.

7 **(6) Consultants and Investigators.** Consultants and investigators employed
8 by the parties or counsel for the parties to assist in the preparation and trial of this
9 action or proceeding, but only after such persons have completed the certification
10 contained in Attachment A, Acknowledgment and Agreement to Be Bound. The
11 Parties will provide the names of any consultants and investigators and their signed
12 certifications upon request within thirty (30) days of the conclusion of the lawsuit.

13 **(7) Experts.** Testifying experts employed by the parties or counsel for the
14 parties to assist in the preparation and trial of this action or proceeding, but only after
15 (a) such persons have completed the certification contained in Attachment A,
16 Acknowledgment and Agreement to Be Bound, and (b) the procedure of Paragraph
17 7(g) of this Order has been satisfied.

18 **(8) Others by Consent.** Other persons only by written consent of the
19 producing party or upon order of the Court and on such conditions as may be agreed
20 or ordered. All such persons shall execute the certification contained in Attachment
21 A, Acknowledgment of Understanding and Agreement to Be Bound.

22 **(b) Protection of Documents Designated ATTORNEYS EYES ONLY.**

23 Documents designated ATTORNEYS EYES ONLY under this Order shall not be used for
24 any purpose whatsoever other than the prosecution or defense of this action, and of any
25 appeal thereof. This agreement, however, does not encompass materials that (a) were in the
26 recipient's possession before receipt from the discloser, (b) are or become publicly known
27

1 without breach by the recipient, (c) are rightfully received by the recipient from a third party
2 who obtained the materials by proper means without a duty of confidentiality, (d) are
3 disclosed by the discloser to a third party without a duty of confidentiality on the third party,
4 or (e) are independently developed or learned by the recipient. The parties and counsel for
5 the parties shall not disclose or permit the disclosure of any documents designated
6 ATTORNEYS EYES ONLY to any third person or entity except as set forth in
7 subparagraphs (1) - (7) below. Subject to these requirements, the following categories of
8 persons may be allowed to review documents that have been designated ATTORNEYS
9 EYES ONLY.
10

11 **(1) Outside Counsel of Record.** Outside counsel of record for the parties
12 and employees and agents of counsel who have responsibility for the preparation and
13 trial of the action, including any independent litigation support providers retained by
14 outside counsel to assist in this action, and their employees, contractors, and agents
15 whose duties and responsibilities require access to such materials and who are not
16 current employees of any party to this litigation or of any direct competitor to any party
17 to this litigation.
18

19 **(2) In-House and Non-Record Outside Attorneys for the Parties.** Two (2)
20 in-house attorneys who are members of at least one state bar in good standing or, if a
21 party does not have in-house attorneys who are members of at least one state bar in
22 good standing, two (2) non-record outside attorneys for each party who shall execute
23 Exhibit A hereto, subject to the Nevada Rules of Professional Conduct.

24 **(3) The Court.** The Court and its personnel.

25 **(4) Court Reporters and Recorders.** Court reporters and recorders engaged
26 for depositions.

27 **(5) Persons Creating or Receiving Documents.** Any person who, on the

1 face of the document, authored, received, or recorded the designated document, as well
2 as any person who has previously seen or was aware of the designated document, as
3 established through deposition testimony or otherwise under oath or as agreed upon by
4 counsel for all parties.

5 **(6) Consultants and Investigators.** Consultants and investigators employed
6 by the parties or counsel for the parties to assist in the preparation and trial of this action
7 or proceeding, but only after such persons have completed the certification contained in
8 Attachment A, Acknowledgment and Agreement to Be Bound. The Parties will provide
9 the names of any consultants and investigators and their signed certifications upon
10 request within thirty (30) days of the conclusion of the lawsuit.

11 **(7) Experts.** Testifying experts employed by the parties or counsel for the
12 parties to assist in the preparation and trial of this action or proceeding, but only after (a)
13 such persons have completed the certification contained in Attachment A,
14 Acknowledgment and Agreement to Be Bound, and (b) the procedure of Paragraph 7(g)
15 of this Order has been satisfied.

16 **(8) Others by Consent.** Other persons only by written consent of the
17 producing party or upon order of the Court and on such conditions as may be agreed or
18 ordered. All such persons shall execute the certification contained in Attachment A,
19 Acknowledgment of Understanding and Agreement to Be Bound.

20 **(c) Protection of Documents Designated OUTSIDE ATTORNEYS EYES**
21 **ONLY.** Documents designated OUTSIDE ATTORNEYS EYES ONLY under this
22 Order shall not be used for any purpose whatsoever other than the prosecution or
23 defense of this action, and of any appeal thereof. This agreement, however, does not
24 encompass materials that (a) were in the recipient's possession before receipt from the
25 discloser, (b) are or become publicly known without breach by the recipient, (c) are
26 rightfully received by the recipient from a third party who obtained the materials by
27 proper means without a duty of confidentiality, (d) are disclosed by the discloser to a

1 third party without a duty of confidentiality on the third party, or (e) are independently
2 developed or learned by the recipient. The parties and counsel for the parties shall not
3 disclose or permit the disclosure of any documents designated OUTSIDE
4 ATTORNEYS EYES ONLY to any third person or entity except as set forth in
5 subparagraphs (1) - (6) below.

6 Subject to these requirements, the following categories of persons may be allowed to
7 review documents that have been designated OUTSIDE ATTORNEYS EYES ONLY.

8 **(1) Outside Counsel of Record.** Outside counsel of record for the parties and
9 employees and agents of counsel who have responsibility for the preparation and
10 trial of the action, including any independent litigation support providers retained by
11 outside counsel to assist in this action, and their employees, contractors, and agents
12 whose duties and responsibilities require access to such materials and who are not
13 current employees of any party to this litigation or of any direct competitor to any
14 party to this litigation.

15 **(2) The Court.** The Court and its personnel.

16 **(3) Court Reporters and Recorders.** Court reporters and recorders engaged for
17 depositions.

18 **(4) Persons Creating or Receiving Documents.** Any person who, on the face of
19 the document, authored, received, or recorded the designated document, as well as
20 any person who has previously seen or was aware of the designated document, as
21 established through deposition testimony or otherwise under oath or as agreed upon
22 by counsel for all parties.

23 **(5) Consultants and Investigators.** Consultants and investigators employed by
24 the parties or counsel for the parties to assist in the preparation and trial of this action
25 or proceeding, but only after such persons have completed the certification contained
26 in Attachment A, Acknowledgment and Agreement to Be Bound. The Parties will
27 provide the names of any consultants and investigators and their signed certifications

1 upon request within thirty (30) days of the conclusion of the lawsuit.

2 **(6) Experts.** Testifying experts employed by the parties or counsel for the parties to
3 assist in the preparation and trial of this action or proceeding, but only after (a) such
4 persons have completed the certification contained in Attachment A, Acknowledgment
5 and Agreement to Be Bound, and (b) the procedure of Paragraph 7(g) of this Order has
6 been satisfied.

7 **(7) Others by Consent.** Other persons only by written consent of the producing
8 party or upon order of the Court and on such conditions as may be agreed or ordered.
9 All such persons shall execute the certification contained in Attachment A,
10 Acknowledgment of Understanding and Agreement to Be Bound.

11 **(d) Control of Documents.** Counsel for the parties shall take reasonable and
12 appropriate measures to prevent unauthorized disclosure of documents designated for
13 protection under this Order. Counsel shall maintain the originals of the forms signed by
14 persons acknowledging their obligations under this Order for a period of one (1) year after
15 dismissal of the action, the entry of final judgment and/or the conclusion of any appeals
16 arising therefrom.

17 **(e) Copies.** All copies of documents designated for protection under this Order, or
18 any individual portion of such a document, shall be marked with the designation
19 CONFIDENTIAL, ATTORNEYS EYES ONLY, or OUTSIDE ATTORNEYS EYES
20 ONLY if the words do not already appear on the copy. All such copies shall be entitled to
21 the protection of this Order. The term “copies” shall not include indices, electronic
22 databases or lists of documents provided these indices, electronic databases or lists do not
23 contain substantial portions or images of the text of designated documents or otherwise
24 disclose the substance of the designated documents.

25 **(f) Inadvertent Production.** Inadvertent production of any document or information
26 without a designation of CONFIDENTIAL, ATTORNEYS EYES ONLY, or OUTSIDE
27 ATTORNEYS EYES ONLY or any document or information subject to attorney-client

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 privilege, work product immunity, or any other applicable privilege or immunity shall be
2 governed by Fed. R. Evid. 502. Such inadvertent production shall not constitute a waiver of,
3 nor a prejudice to, any claim that such documents or information is CONFIDENTIAL,
4 ATTORNEYS EYES ONLY, OUTSIDE ATTORNEYS EYES ONLY, privileged, or
5 protected by the work product immunity or any other applicable privilege or immunity,
6 provided that the designating party notifies the receiving party in writing promptly after
7 discovery of such inadvertent production. Such inadvertently produced documents and all
8 copies thereof shall be promptly returned to the designating party upon request. No use shall
9 be made of such documents other than to challenge the propriety of the allegedly omitted
10 designation or the asserted privilege or immunity, nor shall the documents be subsequently
11 shown to anyone who has not already been given access to them. No demonstration or proof
12 of error, inadvertence, excusable neglect, or absence of negligence shall be required of the
13 designating party in order for such party to avail itself of the provisions of this paragraph.

14 **(g) Notice Prior to Disclosure.** Before any Expert may be given access to
15 documents or information designated CONFIDENTIAL, ATTORNEYS EYES ONLY, or
16 OUTSIDE ATTORNEYS EYES ONLY, the party seeking to provide such access (the
17 “requesting party”) must give written notice to the designating party of its intention to make
18 such disclosure, providing the person’s name, address, and a curriculum vitae, and for
19 testifying experts, including a list of all publications authored in the last ten (10) years by the
20 person to whom disclosure is proposed. The notice must also provide for testifying experts,
21 a list of all litigations in which the person to whom the disclosure is proposed testified
22 within the last four (4) years. Within five (5) business days from the service of such written
23 notice (the “notice period”), the designating party may object to such disclosure by service
24 of a written notice of objection on the party seeking to make the disclosure, stating the
25 reasons for the objection. The requesting party may not disclose documents or information
26 designated CONFIDENTIAL, ATTORNEYS EYES ONLY, or OUTSIDE ATTORNEYS
27 EYES ONLY to any such person prior to the expiration of the notice period unless consent

1 is granted earlier by the designating party. If the designating party notifies the requesting
2 party of its objection to disclosure (an “objection notice”), the party objecting to the
3 disclosure may file a motion seeking to prohibit the disclosure, and that party shall have the
4 burden of justifying the objection. The motion must be made within ten (10) business days
5 after the date of the objection notice. Failure to file the motion constitutes consent to
6 disclosure. If a motion is filed, the requesting party may not make such disclosure while
7 such motion is pending.

8 **8. Filing of CONFIDENTIAL, ATTORNEYS EYES ONLY, or OUTSIDE**
9 **ATTORNEYS EYES ONLY** Documents Under Seal. To the extent that a pleading or other
10 paper references a document designated for protection under this Order, then the pleading or
11 other paper shall refer the Court to the particular document filed under seal without
12 disclosing the contents of any confidential information.

13 (a) Before any document designated for protection under this Order is filed under
14 seal with the Clerk, the filing party shall first consult with the party that originally
15 designated the document for protection under this Order to determine whether, with the
16 consent of that party, the exhibit may be filed with the Court not under seal.

17 (b) Where agreement is not possible or adequate, a document designated for
18 protection under this Order shall only be filed electronically under seal in accordance with
19 the electronic case filing procedures of this Court, including, without limitation, LR IA 10-5,
20 and the requirements of *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir.
21 2006) and its progeny. Any motion brought pursuant to this provision must be accompanied
22 by a competent certification that the movant has complied with the meet and confer
23 requirements set forth in Section 8(a) above and the Local Rules of this Court.

24 (c) Where filing electronically under seal is not possible or adequate, before a
25 document designated for protection under this Order is filed with the Clerk, it shall be
26 placed in a sealed envelope marked CONFIDENTIAL, ATTORNEYS EYES ONLY, or
27 OUTSIDE ATTORNEYS EYES ONLY which envelope shall also display the case name,

1 docket number, a designation of what the exhibit is, the name of the party in whose behalf it
2 is submitted, and the name of the attorney who has filed the exhibit on the front of the
3 envelope. A copy of any document filed under seal may also be delivered to the judicial
4 officer's chambers.

5 (d) To the extent that it is necessary for a party to discuss the contents of any
6 document designated for protection under this Order in a pleading or other paper filed with
7 this Court, then such portion of the pleading or other paper shall be filed under seal. In such
8 circumstances, counsel shall prepare two versions of the pleading or other paper, a public
9 and a sealed version. The public version shall contain a redaction of references to
10 CONFIDENTIAL, ATTORNEYS EYES ONLY, or ATTORNEYS EYES ONLY
11 documents. The sealed version shall be a full and complete version of the pleading or other
12 paper and shall be filed with the Clerk under seal as set forth above. A copy of the un-
13 redacted pleading or other paper also may be delivered to the judicial officer's chambers.

14 **9. Challenges by a Party to a Designation for Protection Under this Order.**

15 Any CONFIDENTIAL, ATTORNEYS EYES ONLY, or OUTSIDE ATTORNEYS EYES
16 ONLY designation is subject to challenge by any party or non-party with standing to object
17 (hereafter "party"). Before filing any motions or objections to a designation for protection
18 under this Order with the Court, the objecting party shall have an obligation to meet and
19 confer in a good faith effort to resolve the objection by agreement. If agreement is reached
20 confirming or waiving the designation as to any documents subject to the objection, the
21 designating party shall serve on all parties a notice specifying the documents and the nature
22 of the agreement.

23 **10. Action by the Court.** Applications to the Court for an order relating to any
24 documents designated for protection under this Order shall be by motion under Local Rules
25 7-1 or 7-2 and any other procedures set forth in the presiding judge's standing orders or
26 other relevant orders. Nothing in this Order or any action or agreement of a party under this
27

1 Order limits the Court's power to make any orders that may be appropriate with respect to
2 the use and disclosure of any documents produced or used in discovery or at trial.

3 **11. Use of Confidential Documents or Information at a Hearing or Trial.**

4 Absent order of the Court, all hearing and trial proceedings are open to the public and
5 there will be no restrictions on the use at a hearing or trial of any document designated for
6 protection under this Order. If a party intends to present at a hearing or trial documents
7 designated for protection under this Order, or information derived therefrom, such party
8 shall provide advance notice to the party designating the documents for protection under
9 this Order least five (5) days before the commencement of a hearing or trial by identifying
10 the documents or information at issue as specifically as possible (i.e., by Bates number,
11 page range, deposition transcript lines, etc.). Upon motion of the party designating the
12 document for protection under this Order, the Court may thereafter make such orders as
13 are necessary to govern the use of such documents or information at a hearing or trial.

14 **12. Obligations on Conclusion of Litigation.**

15 **(a) Order Remains in Effect.** Unless otherwise agreed or ordered, this Order
16 shall remain in force after dismissal or entry of final judgment not subject to further appeal.

17 **(b) Return of Documents Designated for Protection Under this Order.**

18 Within thirty (30) days after dismissal or entry of final judgment not subject to further
19 appeal, all documents designated for protection under this Order, including copies as defined
20 in Paragraph 6(d), shall be returned to the producing party unless: (1) the document has been
21 offered into evidence or filed without restriction as to disclosure; (2) the parties agree to
22 destruction in lieu of return; or (3) as to documents bearing the notations, summations, or
23 other mental impressions of the receiving party, that party elects to destroy the documents
24 and certifies to the producing party that it has done so. Notwithstanding the above
25 requirements to return or destroy documents, counsel may retain copies of all pleadings,
26 motions, orders, written discovery, and other papers filed with the Court or exchanged by
27 the parties even though they may contain documents designated for protection under this

1 Order. Counsel may also retain attorney work product, including an index which refers or
2 relates to documents designated for protection under this Order, so long as that work product
3 does not duplicate verbatim substantial portions of the text or images of documents
4 designated for protection under this Order. This work product shall continue to be subject to
5 the protections of this Order in accordance with the applicable designation. An attorney may
6 use his or her work product in a subsequent litigation provided that its use does not disclose
7 or use documents designated for protection under this Order.

8 **(c) Return of Documents Filed under Seal.** After dismissal or entry of final
9 judgment not subject to further appeal, the Clerk may elect to return to counsel for the
10 parties or, after notice, destroy documents filed or offered at trial under seal or otherwise
11 restricted by the Court as to disclosure.

12 **13. Order Subject to Modification.** This Order shall be subject to modification
13 by the Court on its own motion or on motion of a party or any other person with standing
14 concerning the subject matter. Motions to modify this Order shall be served and filed under
15 Local Rules 7-1 and 7-2, and the presiding judge's standing orders or other relevant orders.

16 **14. No Prior Judicial Determination.** This Order is entered based on the
17 representations and agreements of the parties and for the purpose of facilitating discovery.
18 Nothing herein shall be construed or presented as a judicial determination that any
19 documents designated for protection under this Order are entitled to protection under Rule
20 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may
21 rule on a specific document or issue.

22 **15. Persons Bound.** This Order shall take effect when entered and shall be
23 binding upon all counsel and their law firms, the parties, and persons made subject to this
24 Order by its terms, including third parties who avail themselves of the terms and conditions
25 of this Order pursuant to Paragraph 14(a).

26 **16. Third Parties.** A party seeking discovery from a third party shall provide
27 a copy of this Order to each third party required to produce documents or otherwise

1 formally disclose information in response to discovery requests during this action. Such
2 third parties may elect to avail themselves of the terms and conditions of this Order, and
3 thereby become a “designating party” or a “producing party” within the meaning of those
4 terms as they are used in the context of this Order.

5 **17. Other Provisions.**

6 (a) If the receiving party learns that any document designated CONFIDENTIAL,
7 ATTORNEYS EYES ONLY, or OUTSIDE ATTORNEYS EYES ONLY produced to it is
8 disclosed to or comes into the possession of any person other than in the manner authorized
9 by this Order, the receiving party responsible for the disclosure must immediately inform the
10 designating party of such disclosure and make a good faith effort to retrieve any information
11 so disclosed and to prevent disclosure by each unauthorized person who received such
12 information.

13 (b) In the event that any document designated CONFIDENTIAL, ATTORNEYS
14 EYES ONLY, or OUTSIDE ATTORNEYS EYES ONLY under this Order is sought by any
15 person or entity not a party to this action, whether by subpoena in another action or service
16 with any legal process, the party receiving such subpoena or service shall promptly notify
17 the designating party in writing if such subpoena or service demands the production of any
18 document so designated. Any such person or entity seeking such any document designated
19 CONFIDENTIAL, ATTORNEYS EYES ONLY, or OUTSIDE ATTORNEYS EYES
20 ONLY by attempting to enforce such subpoena or other legal process shall be apprised of
21 this Order by the party upon whom the subpoena or process was served. Nothing herein
22 shall be construed as requiring anyone covered by this Order to contest a subpoena or other
23 process, to appeal any order requiring production of any document so designated covered by
24 this Order, or to subject itself to penalties for non-compliance with any legal process or
25 order.

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 (c) The computation of any period of time prescribed or allowed by this Order
2 shall be governed by the provisions for computing time set forth in Federal Rule of Civil
3 Procedure 6.

4 (d) The Parties' lawyers, including outside attorneys and in-house counsel, shall
5 be subject to the Nevada Rules of Professional Conduct. For purposes of interpreting these
6 rules, Rule 1.9(b)(2) will be deemed satisfied where a firm with which a lawyer formerly
7 was associated had previously represented a client.

8 (e) No Party shall be required to identify on their respective privilege log any
9 document or communication related to this litigation dated on or after the filing of this
10 lawsuit, which absent this provision, the Party would have been obligated to so identify on
11 said privilege log. The Parties shall exchange their respective privilege document logs at a
12 time to be agreed upon by the Parties following the production of documents.

13 (f) This Protective Order shall be binding upon the Parties and their attorneys,
14 successors, executors, personal representative, administrators, heirs, legal representatives,
15 assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons
16 or organizations over which they have control.

17 (g) All notices required by this Protective Order are to be served on the
18 attorney(s) for each of the Defendant and Plaintiffs listed in the signature block below for
19 each Party.
20
21
22
23
24
25
26
27

EXHIBIT A
CONFIDENTIALITY AGREEMENT

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LEVELS NETWORK, INC., a Delaware corporation; and AW BETEILIGUNGS GMBH, a limited liability company organized under the laws of Germany,

Case Number:
2:21-CV-01796-RFB-BNW

[PROPOSED] PROTECTIVE ORDER

Plaintiffs,

vs.

JONAS FREY, an individual,

Defendant.

**ACKNOWLEDGMENT AND
AGREEMENT TO BE BOUND**

The undersigned hereby acknowledges that he/she has read the Protective Order entered in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the District of Nevada in matters relating to the Protective Order and understands that the terms of the Protective Order obligate him/her to use documents designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER, ATTORNEYS EYES ONLY – SUBJECT TO PROTECTIVE ORDER, or OUTSIDE ATTORNEYS EYES ONLY – SUBJECT TO PROTECTIVE ORDER in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such documents or information derived directly therefrom to any other person, firm or concern.

The undersigned acknowledges that violation of the Protective Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

Date: _____

Signature: _____